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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matters of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Access Charge Reform,	)	
Price Cap Performance Review	)	CC Docket Nos. 96-262
for Local Exchange Carriers,	)	94-1, 91-213, 95-72
Transport Rate Structure and	)	
Pricing, End User Common Line Charge	)	
To: The Commission		

PETITION FOR RECONSIDERATION  
OF  
NATIONAL PUBLIC RADIO, INC.

Introduction

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, National Public Radio, Inc. ("NPR") hereby petitions for reconsideration of the Fourth Order on Reconsideration and Report and Order in the above-captioned matter.<sup>1</sup>

NPR is a non-profit, noncommercial membership organization of more than 590 public radio stations. NPR produces and distributes such noncommercial educational radio programming as *All Things Considered*, *Morning Edition*, *Talk of the Nation*, and *Performance Today*. In addition, and as addressed more fully below, NPR also manages and operates the Public Radio Satellite System ("PRSS").

<sup>1</sup> Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, rel. Dec. 30, 1997, 63 Fed. Reg. 2094 (Jan. 13, 1998) [hereinafter "December 30, 1997 Order"].

**The Commission Should Reconsider Its December 30, 1997 Order  
And Make Clear That NPR Is Exempt  
From Any Obligation To Contribute To The Universal Service Fund**

In its December 30, 1997 Order, the Commission significantly narrowed the reach of its regulations implementing its discretionary authority under Section 254(d) of the Communications Act to require "other provider[s] of interstate telecommunications" to contribute to universal service.<sup>2</sup> In particular, the Commission raised the *de minimis* contribution threshold from \$100 per year to \$10,000 per year.<sup>3</sup> The Commission also broadened the existing categories of exempt entities to include system integrators, broadcasters of video programming, and non-profit schools, colleges, universities, libraries, and health care providers.<sup>4</sup> In a subsequently issued Errata, moreover, the Commission clarified that the newly established exemptions are not limited to the exempt entity's interstate telecommunications services and that the exemption for broadcasters of video programming extends to all broadcasters.<sup>5</sup>

Notwithstanding these actions, the Commission failed to act on NPR's outstanding request for clarification or waiver of the obligation to contribute to the universal service fund.<sup>6</sup>

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<sup>2</sup> 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.").

<sup>3</sup> December 30, 1997 Order at ¶¶ 293, 297.

<sup>4</sup> See id. at ¶¶ 276-284.

<sup>5</sup> Errata, CC Docket No. 96-45, 96-262, 94-1, 91-213, 95-72, 97-21, DA 98-158, rel. Jan. 29, 1998, at 4 (amending Sections 54.703(b) and 54.703(c) of the Commission's rules).

<sup>6</sup> See Request for Clarification or Waiver, CC Docket No. 96-45 (filed September 15, 1997). By exempting "broadcasters", the Commission has clarified only the exempt status of public radio station licensees. See id. at 1.

As set forth in that request and as demonstrated herein, a strict legal reading of the Commission's rules might require NPR to contribute to the universal service fund, especially on the basis of its activities as manager of the PRSS. Such a result is contrary to the significant Federal and public interest in those activities.<sup>7</sup>

With particular regard to NPR's PRSS management activities, NPR has long managed the system on behalf of public radio stations nationwide. NPR is licensed to operate a small number of transmit and receive earth stations located at NPR's headquarters in Washington, D.C. Additional transmit and receive earth stations that comprise key components of the PRSS are licensed to, owned by, and located at a number of public radio stations across the country. The more than 400 interconnected public radio stations, including both NPR and non-NPR stations, maintain and operate receive-only earth stations in order to receive noncommercial educational, cultural, and informational programming from a multitude of program producers for broadcast to a diverse public -- including rural, minority, and other unserved and underserved audiences.

While NPR manages the system, the national-level assets of the system, including two transponders located on the Galaxy IV satellite operating at 99 degrees W.L., are owned by the Public Radio Satellite Interconnection System Charitable Trust (the "Trust"). The trustees of the Trust are charged with ensuring that the Trust assets are preserved for the benefit of public radio stations participating in the PRSS. NPR's management of the PRSS is also subject to regular review by a Distribution and Interconnection Committee, whose members are elected by and

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<sup>7</sup> The telecommunications services associated with the PRSS are not offered on a common carrier basis. See 47 U.S.C. § 254(d); Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, at ¶ 785-86 (rel. May 8, 1997) [hereinafter "May 8, 1997 Report and Order"].

represent public radio stations and producers throughout the public radio system.

The clear public interest nature of these activities is supported by a long-standing and substantial Federal interest.<sup>8</sup> Indeed, Congress authorized a substantial portion of the funding for the establishment and maintenance of the current PRSS in the Public Telecommunications Act of 1988.<sup>9</sup> The purpose of that authorization, and Congress's subsequent appropriation of \$200 million for both the public television and public radio satellite systems,<sup>10</sup> was to continue and expand the nationwide, satellite-interconnected system of distributing public telecommunications services.<sup>11</sup> Congress sought to accommodate the present and future needs of public telecommunications entities, which, by statute, are entitled to preferential access to the satellite interconnection system.<sup>12</sup> Congress recognized, however, that the full capacity of the PRSS might not be reached for a number of years, and it specifically endorsed the leasing of any excess capacity for other uses in order to subsidize the cost of maintaining the PRSS.<sup>13</sup>

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<sup>8</sup> As part of the Public Broadcasting Act of 1967, Congress authorized the Corporation for Public Broadcasting to assist in the establishment of one or more interconnection systems for the distribution of educational television or radio programs. Pub. L. No. 90-129, § 201, 81 Stat. 365, 370 (1967) (codified, as amended, at 47 U.S.C. § 396(g)(1)(B)).

<sup>9</sup> Pub. L. 100-626, 100th Cong., 2d Sess., 102 Stat. 3207 (amending Section 396(k) of the Communications Act of 1934).

<sup>10</sup> Pub. L. No. 100-436, 102 Stat. 1680, 1708-09 (1988) (appropriating \$57.5 million); Pub. L. No. 101-166, 103 Stat. 1159, 1185 (1989) (appropriating \$76.25 million); Pub. L. No. 101-517, 104 Stat. 2190, 2217 (1990) (appropriating \$66.94 million).

<sup>11</sup> See H. Rep. No. 825, 100th Cong., 2d. Sess. 10-15 (1988) [hereinafter "House Report"]; S. Rep. No. 444, 100th Cong., 2d Sess. 6-10 (1988) [hereinafter "Senate Report"].

<sup>12</sup> 47 U.S.C. § 396(h)(2).

<sup>13</sup> House Report at 12-13; Senate Report at 6-7.

Based on the foregoing, it would be contrary to the Federal interest in the PRSS and contrary to the public interest served by the PRSS to divert revenue used to support and sustain the PRSS to the universal service fund. It is particularly difficult to justify such a result given the Commission's determination that the public interest warrants exemption for purely commercial endeavors, such as cable commercial access leasing and telecommunications system integration.

Accordingly, NPR urges the Commission to clarify its rules as amended by the December 30, 1997 Order and clearly exempt NPR either by name or by reference to its status as a "public broadcasting entity" under Section 397(11) of the Communications Act,<sup>14</sup> from the obligation to contribute to the universal service fund. NPR also requests expeditious resolution of this matter, including as part of any impending Commission order addressing the outstanding issues from the May 8, 1997 Report and Order,<sup>15</sup> in order to avoid uncertainty regarding NPR's filing obligations.

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<sup>14</sup> Section 397(11) defines "public broadcasting entity" as "the Corporation [for Public Broadcasting], any licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs." 47 U.S.C. § 397(11) (emphasis added).

<sup>15</sup> See December 30, 1997 Order at ¶ 6.

**Conclusion**

For the foregoing reasons, NPR requests the Commission to clarify its December 30 Order by expressly exempting NPR by name or by expressly exempting "public broadcasting entities" from the obligation of "other provider[s] of interstate telecommunications" to contribute to the universal service fund.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

A handwritten signature in black ink, appearing to read "Neal A. Jackson", is written over a horizontal line.

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